

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CAPE BENAT NAVIGATION, INC.

Plaintiff,

08-cv-05501 (DC)

-against-

AFFIDAVIT IN SUPPORT  
OF MOTION TO VACATE  
MARITIME ATTACHMENT

PROGETRA S.A.

Defendant.  
-----X

STATE OF NEW YORK     )  
                                   )     ss:  
COUNTY OF NEW YORK    )

Jorn A. Holl, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York and in this District and am counsel with the law firm of Kavanagh Maloney & Osnato LLP ("KMO"). I make this affidavit on personal knowledge and in support of KMO's motion to vacate the recent attachment of KMO's funds.

2. By its verified complaint filed June 18, 2008, Plaintiff alleged that it had an admiralty and maritime claim against Defendant Progetra S.A.

3. Pursuant to Federal Admiralty Rule B, on July 28, 2008, this Court (Chin, J.) issued an Order in this case directing the Clerk to re-issue a Rule B maritime attachment order concerning Progetra in an amount up to \$100,000.00.

4. Thereafter, on or about August 1, 2008, pursuant to Rule B, an electronic funds transfer ("EFT") attachment occurred in this case in the amount of \$16,292.27 (the "Attachment"). This sum belongs to KMO and was in no way an asset of Defendant Progetra.

5. The Attachment of the \$16,292.27 concerned an EFT payment made by KMO's Austrian banking client Raiffeisen Zentralbank Oesterreich AG ("RZB"), directly to KMO at KMO's account in this District at Citibank.

6. The attached August 1 EFT to KMO concerned the payment of KMO's legal services in a case entitled *Petraco Oil Co. Ltd. v. Progetra S.A.*, 08-cv-03115 (PAC). That case is currently pending in this District before Judge Crotty. In *Petraco*, in June and July 2008, I represented RZB as an intervenor, and KMO in no way represented Progetra.

7. In late July, 2008, KMO billed RZB for legal services performed in the *Petraco* matter. The amount of KMO's July bill was \$16,292.27.

8. On August 1, 2008, RZB attempted to pay its KMO bill by a routine EFT to KMO's bank, namely by EFT to Citibank in Manhattan. The reference number of the EFT was A0466101/010808. For purposes of identification, RZB office personnel labeled the August 1, 2008 EFT to KMO as "*Petraco v. Progetra*."

9. Because of the identification label attached to the August 1 EFT, the EFT was attached while traveling electronically through JP Morgan Chase as intermediary bank. The SWIFT wire transfer system's notice of attachment of the \$16,292.27 is attached hereto as Exhibit 1.

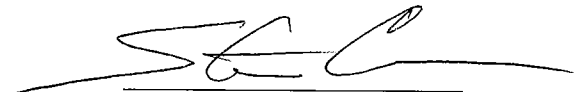
10. RZB's underlying EFT payment to KMO's account at Citibank was a simple payment of a legal bill related to work I performed for RZB in the *Petraco* matter before Judge Crotty;

11. RZB was the originator of the attached August 1, 2008 EFT and KMO the recipient, and defendant Progetra has no interest in the attached \$16,292.27 in any way.

Movant therefore respectfully requests that the Attachment of \$16,292.27 be vacated.

  
Jorn Axel Holl

Sworn to before me this  
14th day of August, 2008

  
Notary Public

**STEVEN MARK CORDERO**  
Notary Public, State of New York  
No. 02CO000031  
Qualified in Queens County  
Commission Expires May 21, 2011

# **EXHIBIT 1**

QUOTE

Sehr geehrte Damen und Herren!

Betrifft Zahlungsauftrag von Protega SA, Kto Nr. 03550969260,  
unter Ref. A0466101/010808 über USD 16292,27

Wir haben von unserer Korrespondenzbank JP Morgan Chase  
Bank (CHASUS33) folgende Anfrage erhalten:

ã1:F01RZBAATWWAXX6813344141üã2:01991401080805CHASUS33DXXX191974665108  
08052001Nüã3:ã108:XXXXXXXXXXXXXFO  
ã4:  
:20:JPM7817-01AUG08  
:21:1551500214FS  
:79:ATTN PAYMENT INVESTIGATION PLEASE REFER TO  
YOUR SWIFT MT 103 DATED 01AUG08 REFERENCE  
A0466101/010808. USD16,292.27 VALUED 05AUG08  
ORDCUS PROGETRA SA. FAVOUR CITIBANK NEW  
YORK/ACCOUNT PARTY KAVANAGH MALONEY + OSNATO  
LLP. PLEASE BE ADVISED THAT WE ARE HOLDING YOUR  
PAYMENT PURSUANT TO A MARITIME ATTACHMENT COURT  
ORDER ISSUED BY THE FEDERAL COURT IN THE  
SOUTHERN DISTRICT OF NEW YORK. RE CAP E BENAT  
NAVIGATION INC V. PROGETRA SA 08CV5501(  
DC)-SDNY. THE PLAINTIFF IS REPRESENTED BY FREEHI  
LL HOGAN MAHAR LLP, 80 PINE ST. NEW YORK, NY 1  
0005-1759 TEL 212-425-1900 FAX 212-425-1901 EMAIL:  
L: RECEPTIONFREEHILL.COM. THANK  
YOU  
REGARDS, JPMORGAN CHASE BANK, N.A.  
NORBERTO BONGA  
FOR ALL CORRESPONDENCE PERTAINING TO  
THIS CASE, PLEASE BE SURE TO QUOTE OUR  
JPMORGAN CHASE BANK, N.A. REF. JPM7817-01AUG08.  
-üã5:ãMAC:D4E17E4BüãCHK:C5E21A3B2082

Bitte um weitere Weisungen. Vielen Dank im Voraus!

Zahlungsausgang:

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KAVANAGH MALONEY + OSNATO LLP  
415 MADISON AVENUE  
NEW YORK 10017 USA  
:70:INVOICE NO. 1986-48-072808  
JULY 28 2008  
:71A:OUR

-ü

UNQUOTE